

Message

From: Dyner, Mark [dyner.mark@epa.gov]
Sent: 11/8/2017 3:18:47 PM
To: Beck, Nancy [Beck.Nancy@epa.gov]
CC: Baptist, Erik [baptist.erik@epa.gov]; Echeverria, Marietta [Echeverria.Marietta@epa.gov]; Keigwin, Richard [Keigwin.Richard@epa.gov]; Layne, Arnold [Layne.Arnold@epa.gov]; Guilaran, Yu-Ting [Guilaran.Yu-Ting@epa.gov]; Anderson, Brian [Anderson.Brian@epa.gov]; Villanueva, Philip [Villanueva.Philip@epa.gov]; Mclean, Kevin [Mclean.Kevin@epa.gov]; Knorr, Michele [knorr.michele@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Sands, Jeffrey [sands.jeffrey@epa.gov]; Dourson, Michael [dourson.michael@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]
Subject: RE: NCAP v. NMFS, No. 07-1791 (W.D. Wash.) - motion to amend settlement agreement

Nancy,

Here is the key “ask” in NMFS’ draft declaration. It asks for time prior to release of a draft to EPA (6 months) so we can do as you suggest and it builds in the possibility that changes may arise later in the consultation a result of changes to EPA’s methodologies.

36. For the above reasons, NMFS is proposing the following schedule. First, the Court should set an interim deadline for NMFS to issue to EPA a draft organophosphates biological opinion. This deadline would be set at six months from the issuance of the Court’s order on this motion. During that time, EPA would as necessary have the opportunity to continue and resolve its assessment of its biological evaluations. The Court should also set a further deadline for NMFS’s final biological opinion, of 18 months after the date set for the draft biological opinion, to allow for the above-described public and stakeholder processes. NMFS requests that this second, final biological opinion deadline be contingent on EPA’s biological evaluations remaining unmodified throughout the remaining process of this consultation. Under the ESA statute and regulations, NMFS’s biological opinion must take into account and use the information provided in EPA’s biological evaluations. Therefore, modification of the biological evaluations would likely necessitate revision of the final NMFS biological opinion, and could similarly make it necessary for the deadline for the final biological opinion to be modified. Thus, the Court’s order should specify the contingency that should the biological evaluations be modified during the forthcoming consultation process, the 18-month deadline for the final NMFS biological opinion would not apply, and the agencies would promptly submit additional briefing to the Court on an appropriate deadline for completion of that final biological opinion.

From: Beck, Nancy
Sent: Wednesday, November 08, 2017 10:03 AM
To: Dyner, Mark <dyner.mark@epa.gov>
Cc: Baptist, Erik <baptist.erik@epa.gov>; Echeverria, Marietta <Echeverria.Marietta@epa.gov>; Keigwin, Richard

<Keigwin.Richard@epa.gov>; Layne, Arnold <Layne.Arnold@epa.gov>; Guilaran, Yu-Ting <Guilaran.Yu-Ting@epa.gov>; Anderson, Brian <Anderson.Brian@epa.gov>; Villanueva, Philip <Villanueva.Philip@epa.gov>; Mclean, Kevin <Mclean.Kevin@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Perlis, Robert <Perlis.Robert@epa.gov>; Sands, Jeffrey <sands.jeffrey@epa.gov>; Dourson, Michael <dourson.michael@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Wise, Louise <Wise.Louise@epa.gov>

Subject: Re: NCAP v. NMFS, No. 07-1791 (W.D. Wash.) - motion to amend settlement agreement

Mark,

I haven't reviewed closely but do these responses leave open the possibility that we may receive a Biop, work with NMFS on it, and then share a revised version with the public? It may be good to keep that option on the table (vs obliging is to share w the public the first draft nmfs sends)

Thanks.

Sent from my iPhone, please excuse typos.

On Nov 8, 2017, at 10:38 PM, Dyner, Mark <dyner.mark@epa.gov> wrote:

Privileged/attorney-client communication/attorney work product/do not disclose

All,

Here are the draft declarations to support a motion for an extension to NMFS' 12/31/17 court-ordered deadline to complete nationwide BiOps on chlorpyrifos, diazinon and malathion. Given that DOJ wants our ok on these by 3 pm today, I'm sending these to you now without having reviewed the Rauch draft or all of DOJ's edits on Marietta's draft. As an additional complication, Marietta, if you're are going to be out of the office tomorrow, you will need to get yours finished by COB today, and there are a lot of holes (in yellow highlight) for EFED to fill in. Finally, I will note that DOJ added a proposed paragraph to Marietta's declaration discussing an additional basis for extension regarding the need for further interagency discussion on EPA's BE methodology. I'm assuming that came out of interagency discussions last night, but I cannot speak to that.

In any case, I need to get back to DOJ by 3pm with our comments, so I need any comments folks have by not later than 2pm so I can incorporate your edits into the drafts. Sorry for the rush. Thanks.

Mark

From: Grosko, Brett (ENRD) [<mailto:Brett.Grosko@usdoj.gov>]

Sent: Tuesday, November 07, 2017 8:16 PM

To: Daniel Pollak - NOAA Federal (daniel.pollak@noaa.gov) <daniel.pollak@noaa.gov>; Dyner, Mark <dyner.mark@epa.gov>; Nancy Brown-Kobil <nancy.brown-kobil@sol.doi.gov>; Romanik, Peg <peg.romanik@sol.doi.gov>; Shultz, Gina <gina_shultz@fws.gov>

Cc: Govindan, Jay (ENRD) <Jay.Govindan@usdoj.gov>

Subject: NCAP v. NMFS, No. 07-1791 (W.D. Wash.) - motion to amend settlement agreement

All,

I am sending the draft Rauch and Echeverria declarations. Please send this up your chain of command for review and comment as appropriate. Please let us know by 3:00 p.m. EDT if you have any global objections. We plan to contact plaintiffs at that time and will file the motion Thursday evening.

Brett

J. Brett Grosko

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